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Supreme Court of the United States

OCTOBER TERM, 1942

No. 495

G. E. BURFORD, ET AL.,
Petitioners

v.

SUN OIL CO., ET AL.

No. 496

SUN OIL CO., ET AL,
Petitioners

v.

G. E. BURFORD, ET AL.

REPLY BRIEF FOR G. E. BURFORD, THE RAILROAD COMMISSION OF TEXAS, ET AL.

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REPLY BRIEF FOR G. E. BURFORD, THE RAILROAD COMMISSION OF TEXAS, ET AL.

I.

The action of the Circuit Court of Appeals in granting respondents' second petition for rehearing.

The cases cited by the respondents in support of the action of the Circuit Court of Appeals in granting respondents' second petition for rehearing do not control the present case. Those cases relate to the situation where the petition for rehearing is *filed*

promptly. In such cases, we concede that the court may act on the petition at any time during the same term of court. This case, however, presents a different question, viz., whether the Circuit Court of Appeals should have permitted the filing of the second petition for rehearing when it was not presented until after the period for applying for a writ of certiorari to this court had expired, and when it merely prayed for a reconsideration of the same issues of law and fact which had already been considered twice by the Circuit Court of Appeals, upon the original hearing and upon the first petition for rehearing.

We have been unable to find any cases determinative of this question, and none have been cited by the respondents or by the Circuit Court of Appeals. The question, therefore, must be decided on general principles. We do not think that the issuance of the mandate is important, but we do think that it is important that the period for filing a petition for certiorari had expired. The purpose behind the limitation of the period for filing a petition for certiorari to three months must have been to fix a time at the end of which judgments of the Circuit Courts of Appeals might be considered final. It would be an anomaly to hold that the Supreme Court had lost the power to review the judgment of the Circuit Court of Appeals, because of the expiration of the three months' period, but that the Circuit Court of Appeals retained the power to review its own judgment.

Nor are there any equitable grounds to justify the granting of respondents' second petition for rehearing. The issues decided against respondents by the Circuit Court of Appeals in its first judgment all depended on the interpretation of this Court's opinions in the *Rowan & Nichols cases*, 310 U. S. 573 and 311 U. S. 570, and diligence would certainly have required that respondents should seek a review of the rulings of the Circuit Court of Appeals by this Court. The fortuitous circumstance that a different set of judges of the same Circuit Court of Appeals later decided the same issues in a manner contrary to the first judgment in this case does not change the nature of the issues or excuse respondents' want of diligence in failing to apply for a writ of certiorari. We submit that Judge McCord was correct in his conclusion that respondents' "second petition for rehearing came too late and should not have been granted." See 130 F. (2d) 10, 19.

II.

The validity of the Railroad Commission's order under the Fourteenth Amendment.

The District Court held that the Railroad Commission's order was valid under the Fourteenth Amendment (R. 90-91). The Circuit Court of Appeals in its first opinion sustained this conclusion (124 F. (2) at p. 470). In its second opinion, the Circuit Court of Appeals specifically stated that it

had not withdrawn its holding that the order was valid so far as any claims under the United States Constitution are concerned. (130 F. (2d) at p. 19). The respondents, however, by their cross-petition have attacked this holding, and it will, therefore, be necessary to reply to this contention briefly.

The spacing rule (Rule 37) is a part of the general scheme of regulation of the production of crude petroleum which was thoroughly considered by this Court in the *Rowan & Nichols* cases, 310 U. S. 573 and 311 U. S. 570. Permits to drill wells as exceptions to the spacing rule may be granted either to prevent waste or to protect vested rights. (R. 111) It is submitted that the facts in this case amply justify the conclusion reached by the District Court and also by the Circuit Court of Appeals that the action of the Railroad Commission was not in violation of the Fourteenth Amendment.

In the first place, the evidence clearly shows that no property of the respondents is being confiscated by the order attacked. There is no proof whatever that the respondents will not recover their fair share of the oil; in fact, the evidence affirmatively shows that they have already recovered what they are legally entitled to demand. The Sun Oil Company has seven wells on its lease and Magnolia Petroleum Company has six wells on its lease, which were drilled beginning in 1932 (R. 263) and which have since produced at least 100% of the recoverable oil originally beneath their leases. (R. 286). In spite of this large production, the respondents' wells are

as productive as ever, because the oil which has been produced has all been replaced by other oil which has been drained from other leases. (R. 286, 347). Since the respondents have already produced the equivalent of the recoverable oil originally beneath their leases and will probably produce for a long time in the future, their property has certainly not been confiscated. *Brown* v. *Humble Oil & Refining Co.*, 126 Tex. 296, 83 S. W. (2d) 935, 87 S. W. (2d) 1069; *Gulf Land Co.* v. *Atlantic Refining Co.*, 134 Tex. 59, 131 S. W. (2d) 73.

The respondents' assertions that by reason of the drilling and production of oil from the wells on Burford's strip the "Sun will lose between 70,000 and 100,000 barrels of oil which its wells would otherwise produce and Magnolia's loss of oil to the Burford locations will be about 50% as much as Sun's loss" (Respondents' Brief, p. 7) might be misleading if the relevant facts are not kept in mind. The substance of what the witness was saying was that the drainage advantage which Sun and Magnolia have enjoyed during all the years when Burford has had no wells on his tract will be diminished to the extent stated. (R. 369, 377). In other words, the admitted drainage of Burford's tract by the Sun and Magnolia wells (R. 243-245) will be at least decreased if not prevented altogether, so that Sun and Magnolia will hereafter have to share some of the production with Burford. This obviously does not show confiscation but merely the deprivation of an unfair advantage which has existed for many years.

Nor, from the point of view of the advantage to Burford from the drilling of the wells, can the Railroad Commission's order be deemed unreasonable. While the drilling of four wells would give Burford an advantage in density, the Railroad Commission is entitled to consider the fact that prior to 1939 Burford was not allowed to drill any wells and, of course, had no production at all from his strip. The evidence also shows that this strip is on the eastern edge of the oil field where geological conditions are very irregular (R. 397). One of the Burford wells is a dry hole and another is a pumper. (R. 391). The Railroad Commission, of course, retains its power of continuous supervision and, under the facts, it cannot be said that it has given Burford an unfair advantage.

The respondents lay some stress on their offer to pool one or both of their leases with the Burford lease. (Respondents' Brief, p. 8). This offer, it should be noted, is purely on the basis of the *future* production. (R. 158, 19). In other words, Burford would be given no opportunity to make up for lost drainage over the past ten years. Even if the offer to pool were on a fair basis, there would be no obligation on Burford's part to pool his acreage with respondents. The Texas statute, Vernon's Annotated Texas Civil Statutes, Article 6014(g), provides that "it is not the intent of this Act to require repressuring of an oil pool or that the separately owned properties in any pool be unitized under one management, control or ownership." The

*Copied infra, p. 21

Railroad Commission, therefore, had no power to compel a pooling of the separate tracts.

The respondents' claim that the Railroad Commission should have adjusted the allowable production on an acreage basis is the same contention which was asserted and overruled by this court in the *Rowan & Nichols cases*, 310 U. S. 573, 311 U. S. 570.

III

The alleged duty of the federal courts to determine the validity of the Railroad Commission's order under the state law by applying an independent judgment to the facts.

The respondents, Sun Oil Company and Magnolia Petroleum Company, in their brief (pp. 55-72) have taken the position squarely that under the Texas law the courts must exercise an "independent judgment" as to the validity of a Rule 37 order of the Railroad Commission, that this means that the "substantial evidence" rule is not applicable, and that the question for the court is whether, *in its own independent judgment*, the order is proper —not whether the action of the Railroad Commission has reasonable support in substantial evidence. In other words, the respondents contend that the state law is that the court must put itself in the place of the Commission and decide as an original proposition whether on the evidence it hears the

court would enter the same order as that entered by the Railroad Commission. If in its independent judgment the order is not proper, the court must strike down the order. Respondents further say that this course is obligatory upon the federal courts (where jurisdiction rests on diversity of citizenship) as well as the state courts. (Respondents' Brief, pp. 56-63).

While it is not certain that the respondents have adopted in all respects the correct interpretation of the decisions of the Supreme Court of Texas in the cases of *Railroad Commission* v. *Shell Oil Co.*, 161 S. W. (2d) 1022, and *Cook Drilling Co.* v. *Gulf Oil Corporation*, 161 S. W. (2d) 1035*, the position taken by respondents makes it plain beyond any doubt that the present case is of the type where the equitable powers of a federal court should not be exercised. If respondents are correct in their position, the federal courts, at the instance of aggrieved leaseholders (at least in cases involving diversity of citizenship) must assume the duties of the Railroad Commission in determining when oil wells may be drilled as exceptions to the Railroad Commission's spacing rules. We submit that such work is no proper part of a federal court's functions.

In the present case, federal jurisdiction is not denied. But the existence of jurisdiction does not mean that the federal courts must undertake to determine all questions of state law which are involved; in proper cases the court itself may impose a limita-

*Compare Note, 21 Texas Law Review 69, 72 (1942)

tion on the exercise of its own jurisdiction where the remedy sought is an injunction against actions or orders of state officers. *Hawks & Hamill*, 288 U. S. 52; *Cavanaugh* v. *Looney*, 248 U. S. 453; *Massachusetts State Grange* v. *Benton*, 272 U. S. 525; *Pennsylvania* v. *Williams*, 294 U. S. 176. This judicial self-limitation has been held to be particularly appropriate where rights are asserted under the state law and there exists an adequate and speedy remedy in the state courts. *Railroad Commission* v. *Pullman Co.*, 312 U. S. 496; *Gilchrist* v. *Interborough Rapid Transit Co.*, 279 U. S. 159; *Chicago* v. *Fieldcrest Dairies*, 316 U. S. 168; *Thompson* v. *Magnolia Petroleum Co.*, 309 U. S. 478.* And as applied specifically to the complicated situation involved in the regulation of the production of oil from the East Texas oil field, this court has held that the issues of state law will not be tried in the federal courts if they require a broader inquiry than is demanded in testing the validity of such orders under the Fourteenth Amendment, and that for the trial of such issues the parties are relegated to the state courts. *Rowan & Nichols cases*, 310 U. S. 573 and 311 U. S. 570.

A consideration of the nature of the issues which are presented under the state law in testing the validity of a Rule 37 order of the Railroad Commission, in the light of the decisions of the Supreme Court of Texas in the cases of *Railroad Commission*

*See Note 54 Harvard Law Review, 1379 (1941); Note 50 Yale Law Journal, 1272 (1941); Isseks, "Jurisdiction of the Lower Federal Courts to Enjoin Unauthorized Action of State Officials," 40 Harvard Law Review, 969 (1927).

v. *Shell Oil Co.*, 161 S. W. (2d) 1022, and *Cook Drilling Co.* v. *Gulf Oil Corporation*, 161 S. W. (2d) 1035, only tends to confirm the wisdom of the conclusions which were reached by this Court in the *Rowan & Nichols cases* and to fortify our position that the federal courts should not undertake to pass on the validity of such orders under the state law. The same intricate and highly technical plan of regulation of the production of crude petroleum is involved in this case as in the *Rowan & Nichols cases*. In those cases an operator was seeking to enjoin the enforcement against it of a method of proration on the ground that it was substantially a per-well allocation which was unfair because of the density of drilling permitted on other tracts. In the present case, two operators are seeking to cancel an order permitting the drilling of wells on an adjacent tract because, through the per-well method of allocation, it is claimed that the permittee will be allowed to produce more than his "fair share" of the oil. The present case is simply an attack upon the same method of regulation as that involved in the *Rowan & Nichols cases*, but from a different angle. The proration orders and the well spacing orders have long been recognized as integral parts of the same scheme of limitation of production for the purpose of the conservation of natural resources. See *Brown* v. *Humble Oil & Refining Co.*, 126 Tex. 296, 83 S. W. (2d) 935, 87 S. W. (2d) 1069; *Gulf Land Co.* v. *Atlantic Refining Co.*, 131 Tex. 59, 131 S. W. (2d) 73; Walker, "The Problem of the Small Tract under Spacing Regulations," 17 Tex. L. Rev. 157 (Supp. Bar Association Proceed-

ings); Ely, "The Conservation of Oil," 51 Harv. L. Rev. 1209. The same reasons of policy which would impel the federal courts to refuse to supervise the exercise of the state's regulatory powers in proration cases would therefore also apply to well-spacing, or Rule 37, cases.

Additional considerations which are peculiar to Rule 37 cases lead to the same conclusion. The appeal provided by the Texas statute (Vernon's Annotated Texas Civ. Statutes, Art. 6049c, § 8) is a special statutory proceeding to which the rules applicable to ordinary civil suits at law or in equity do not apply. *Alpha Petroleum Co.* v. *Terrell*, 122 Tex. 257, 59 S. W. (2d) 364; *Gulf Land Co.* v. *Atlantic Refining Co.*, 134 Tex. 59, 131 S. W. (2d) 73. Under the state review statute, any "interested person affected by" any Railroad Commission order relating to oil or gas may file a suit to test the validity of the order. (Vernon's Annotated Texas Civil Statutes, Art. 6049c, sec. 8).* In Rule 37 cases the term "interested person affected by" a Railroad Commission order has been construed to mean any operator whose lease is adjacent to the permittee's lease. To set the order aside, it is not necessary for the complaining party to show that he is not recovering or will not recover his fair share of the oil, or even that the proposed wells will actually drain any oil from his lease. *Railroad Commission* v. *Shell Oil Co.*, 165 S. W. (2d) 503 (Tex. Civ. App.); *Railroad Commission* v. *Gulf Production Co.*, 115 S. W. (2d) 505 (Tex. Civ. App.) affirmed 134 Tex. 122,

*Copied infra, p 24

132 S. W. (2d) 254. It has been specifically held that in the statutory suit it is not necessary for the complaining party "to show injury to its private property rights sufficient to call for the intervention of the court of equity." *Spear* v. *Humble Oil & Refining Co.*, 139 S. W. (2d) 212 (Tex. Civ. App., writ of error "dismissed, correct judgment" by Texas Supreme Court).

To permit the Texas statutory proceedings to be taken to the federal courts will be to require the federal courts to go through a process which is foreign to any presently recognized legal or equitable method of trial in the federal courts. We doubt that, as it has been interpreted by the Texas courts, the statutory method of review is judicial in character, since it in reality requires the court as an original proposition to determine administrative matters, i. e., when special exceptions to a general spacing rule should be permitted. This is the interpretation placed upon the Texas cases by the respondents in their brief, at pages 71-72. If this interpretation of the Texas holdings is correct, then the federal courts would have no jurisdiction of the statutory proceedings because they are not judicial in character. Compare *Keller* v. *Potomac Electric Power Co.*, 261 U. S. 428. But regardless of the question of jurisdiction, the more orderly procedure would certainly be for the affected parties to seek a determination of the validity of the orders of the Railroad Commission under the state law in the state courts, reserving a right to resort to the federal courts for protection against any alleged violations of the United

States Constitution. Compare *Prentis* v. *Atlantic Coast Line R. R.*, 211 U. S. 210.

There is no question of the adequacy of the remedy which is afforded to the complaining party in the state courts. The Texas statutes provide for expeditious hearings in which prompt relief both in the trial and appellate courts is afforded. See Vernon's Annotated Texas Civil Statutes, Article 6049c, sections 8, 10, and 11.* Even a hasty examination of the reported opinions of the Texas Courts of Civil Appeals and the Texas Supreme Court during the last ten years shows that more than one hundred opinions have been written in Rule 37 cases and that there has been little reluctance on the part of the courts to strike down the Railroad Commission's orders.

The fact that federal jurisdiction in this case rests in part on diversity of citizenship instead of resting entirely upon a federal question, as in the *Rowan & Nichols cases*, should make no difference in the result which is reached. The same reasons of policy apply in one case as much as the other. In order to make a distinction upon this ground, Judge Hutcheson in the *Selby case*, 128 F. (2d) 334, at page 337, relies upon language appearing in this court's first opinion in the *Rowan & Nichols case*, 310 U. S. 573, at page 580, which was later withdrawn by the court in overruling the petition for rehearing. 311 U. S. 614. There is certainly no reason to believe that there exists any prejudice against foreign citizens or corporations in the Texas courts;

*Copied infra, pp. 24-27

in fact, the large number of cases which are found in the reported decisions of the Texas courts in which decisions favorable to foreign corporations in Rule 37 cases have been rendered affirmatively removes the possibility of any such contention being made. The case of *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, is merely authority for the existence of federal jurisdiction as against the contention that the suit is one against the state and does not afford any support for Judge Hutcheson's position that in diversity cases the federal courts must necessarily try the issues of state law in the "statutory suit" in the same way the state courts would try such issues.

If any distinction is to be drawn, it would seem that there is less reason for the federal courts to undertake to pass upon issues of state law involving administrative regulations in diversity cases than in cases where jurisdiction rests upon the assertion of a federal question. Mr. Justice Cardozo's language in *Hawks* v. *Hamill*, 288 U. S. 52, 61, is apposite here:

"Reluctance there has been to use the process of federal courts in restraint of state officials though the rights asserted by the complainants are strictly federal in origin. *Massachusetts State Grange* v. *Benton, supra; Stratton* v. *St. Louis S. W. Ry. Co.*, 284 U. S. 530; *Matthews* v. *Rodgers*, 284 U. S. 521. There must be relucance even greater where the rights are strictly local; jurisdiction having no other basis than the accidents of residence. The need is

clamant in such circumstances for cautious hesitation."*

IV.

The validity of the Railroad Commission's order under the state law.

The respondents have not cited any cases dealing expressly with the question of substantial compliance with the spacing rules of the Railroad Commission, except the cases already cited by us which hold that if the area of the tract in question is larger than the area contemplated by the spacing rules, the Railroad Commission may consider the tract as a separate tract, even though it is too narrow to comply with the spacing distances. *Humble Oil & Refining Co.* v. *Railroad Commission*, 94 S. W. (2d) 1197 (Tex. Civ. App., writ of error refused by Texas Supreme Court); *Wencker* v. *Railroad Commission*, 149 S. W. (2d) 1009 (Tex. Civ. App., writ of error "dismissed, correct judgment" by Texas Supreme Court).

The authorities cited by the respondents in their brief do not even refer to the question of substantial compliance with the Railroad Commission's spacing rules. Apparently the question was not raised in any of these cases. Some of the decisions cited by the respondents were decided on an entirely different point, as in the case of *Sun Oil Company* v. *Railroad*

*See Frankfurter, "Distribution of Judicial Power between United States and State Courts," 13 Cornell Law Quarterly, 499 (1928); Friendly, "Historic Basis of Diversity Jurisdiction," 31 Harvard Law Review, 483 (1928).

Commission, 68 S. W. (2d) 609, which involved a permit which was void because issued without notice and hearing and which, furthermore, was void because issued on a strip to which the Texas Supreme Court held the permittee had no title. (84 S. W (2d) 693). Some of the cases cited are merely cases upholding the Railroad Commission's discretionary power to *refuse* permits. *Smith* v. *Shabay*, 83 S. W. (2d) 719; *Railroad Commission* v. *Wood*, 95 S. W. (2d) 1328; *Smith* v. *Stewart*, 68 S. W. (2d) 627, affirmed 83 S. W. (2d) 945. Other cases involve permits which were held to be valid. *Tide Water Associated Oil Co.* v. *Railroad Commission*, 120 S. W. (2d) 544; *Magnolia Petroleum Co.* v. *Railroad Commission*, 127 S. W. (2d) 230. We see no point in discussing these cases in detail. In none of them is the question of substantial compliance discussed or even referred to. None of them is as recent as the case of *Wencker* v. *Railroad Commission*, 149 S. W. (2d) 1009, which upholds the "substantial compliance" rule.

On the issue of res judicata, the respondents insist that the judgment cancelling the Hammonds permit in Cause No. 54,769, in 1935, forever precluded the drilling of any oil wells upon the strip in question, if considered as a separate tract. (Respondents' Brief, pp. 25-33). The cases recited by respondents, however, show that the Texas law is that the Railroad Commission has the power to grant a new permit, even though a prior permit has been set aside upon same tract, upon the showing of changed conditions. For example, in *Shell Petroleum Corp.* v. *Railroad*

Commission, 86 S. W. (2d) 57, 59 (Writ of Error dismissed), the court said:

> "We are not to be understood as holding that Robinson is permanently denied the right to additional wells if authorized by the Railroad Commission under changed conditions."

This is likewise the holding of the Supreme Court of Texas in *Magnolia Petroleum Company* v. *New Process Production Co.*, 129 Tex. 617, 104 S. W. (2d) 1106. The cases of *Edgar* v. *Stanolind Oil & Gas Co.*, 90 S. W. (2d) 656, and 98 S. W. (2d) 222 were modified by the later holding of the Supreme Court in the *New Process Case*, *supra*, as is recognized by the later opinion in *Stanolind Oil & Gas Co.* v. *Edgar*, 107 S. W. (2d) 631. The respondents' arguments as to whether the conditions have changed are all related to the situation of the Burford tract, when considered together with the Sun Oil Company tract, and not on the basis of the Burford tract as a separate tract. When so considered, the evidence of the drilling of additional wells and the other facts heretofore referred in our original brief, amply support the finding of the District Court that there had been material changes in conditions. (R. 90).

In support of their proposition that the pendency of Cause No. 53,915 in the state court deprived the Railroad Commission of jurisdiction (Respondents' Brief, p. 33-36) to consider Burford's application, the respondents reply upon the cases of *Barnsdall*

Oil Co. v. *Railroad Commission*, 90 S. W. (2d) 663, and *McNeny* v. *Railroad Commission*, 96 S. W. (2d) 96. These cases, however, were decided prior to the decision of the Supreme Court in *Magnolia Petroleum Co.* v. *New Process Production Co.*, 129 Tex. 617, 104 S. W. (2d) 1106, which held that in a suit to set aside a Railroad Commission order which was entered without notice and hearing, the court obtained jurisdiction only for the purpose of setting aside the order for failure to comply with procedural requirements and did not obtain jurisdiction to determine the merits of the right to drill a well upon the tract in question. Since the permit in Cause No. 53,915 was attacked and was eventually set aside upon the ground that it was issued without notice and hearing, the pendency of this suit did not deprive the Railroad Commission of the right to consider Burford's application upon the merits. Furthermore, the permit involved in that case had long since been abandoned, and such abandonment would give the leaseowner the right to apply for a new permit. *McNeny* v. *Railroad Commission*, 96 S. W. (2d) 96; compare *Railroad Commission* v. *Wencker*, 161 S. W. (2d) 800.

With regard to the action of the Railroad Commission in granting four permits instead of only one permit, the Railroad Commission was entitled to take into consideration the fact that the owner of the narrow strip in question had been prevented from producing any oil from his tract for about eight years, during which time oil had been produced in large quantities from the adjacent tracts. *Humble Oil &*

Refining Co. v. *Potter*, 143 S. W. (2d) 135 (Tex. Civ. App.) The respondents' position seems to be that they should be allowed to continue to produce without interference by Burford, although they have already produced more than the equivalent of the recoverable oil in place beneath their leases, but, on the other hand, they contend that Burford should be strictly limited by the Railroad Commission to the production of the oil which is in place under his strip. (See Respondents' Brief, pp. 36-40). In other words, the respondents' seem to contend that one rule of property should apply to their leases and that an entirely different rule of property should apply to the Burford lease. If the rule of property is that a person should be limited to the amount of oil beneath his lease, the respondents certainly have no right to complain since they have already produced more than this amount. (R. 286, 347). If, on the other hand, they claim to have the right, because of their favorable position in the field, to continue to drain oil in excess of the amount of recoverable oil originally beneath their lease, then Burford should be entitled to the same right. Because of the variable conditions in the field, one of Burford's wells has turned out to be a dry hole and another has turned to be a pumper (R. 391) and any prediction as to the exact amount of oil which will be produced by Burford's wells is therefore largely a matter of speculation. Under the circumstances, the Railroad Commission under the Texas law did not abuse its discretion in allowing Burford four locations upon the strip in question.

CONCLUSION

For the reasons stated, it is respectfully prayed that the judgment of the United States Circuit Court of Appeals should be reversed and the judgment of the District Court affirmed.

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APPENDIX

Texas Statutes relating to the power of the Railroad Commission to promulgate and enforce well-spacing orders and appeals to the courts from such orders. All Statutes here copied are to be found in Vernon's Annotated Texas Civil Statutes.

"Article 6014. 'Waste'

"The production, storage or transportation of crude petroleum oil or of natural gas in such manner, in such amount, or under such conditions as to constitute waste is hereby declared to be unlawful and is prohibited. The term "waste" among other things shall specifically include:

". . .

"(f) Physical waste or loss incident to, or resulting from, so drilling, equipping, locating, spacing or operating well or wells as to reduce or tend to reduce the total ultimate recovery of crude petroleum oil or natural gas from any pool.

"(g) Waste or loss incident to, or resulting from, the unnecessary, inefficient, excessive or improper use of the reservoir energy, including the gas energy or water drive, in any well or pool; however, it is not the intent of this Act to require repressuring of an oil pool or that the separately owned properties in any pool be unitized under one management, control or ownership."

"Article 6029. 'Rules and Regulations'

"The Commission shall make and enforce rules, regulations or orders for the conservation of crude petroleum oil and natural gas and to prevent the waste thereof, including rules, regulations or orders for the following purposes:

"(1) To prevent the waste, as hereinbefore defined, of crude petroleum oil and natural gas in drilling and producing operations and in the storage, piping and distribution thereof.

". . .

"(3) For the drilling of wells and preserving a record thereof.

"(4) To require wells to be drilled and operated in such manner as to prevent injury to adjoining property.

". . .

"(8) It shall do all things necessary for the conservation of crude petroleum oil and natural gas and to prevent the waste thereof, and shall make and enforce such rules, regulations or orders as may be necessary to that end.

"(9) To provide for the issuance of permits, tenders, and other evidences of permission when the issuance of such permits, tenders, or permission is necessary or incident to the enforcement of its rules, regulations, or orders for the prevention of waste."

"Article 6036a. 'Notice of Hearing'

"No rule, regulation or order shall be adopted by the Commission under the provisions of this Act or of Title 102 of the Revised Civil Statutes of Texas, 1925, as amended, dealing with the conservation of oil and gas and the prevention of the waste thereof, except after hearing upon at least ten (10) days notice given in the manner and form prescribed by the Commission; provided that in case an emergency is found by the Commission to exist which, in its judgment requires the making of a rule, regulation or order without notice and hearing, such emergency rule, regulation or order may be promulgated and shall have the same validity as if a hearing with respect to the same had been held after due notice. The emergency rule, regulation or order authorized herein shall remain in force no longer than fifteen (15) days from its effective date, and, in any event, it shall expire when the rule, regulation or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation or order becomes effective.

"The Commission may, without prior notice, revoke any rule, regulation or order promulgated by it; and it may, without prior notice, amend the same, provided the subject matter of the amendment was considered at the hearing made the basis for such rule, regulation or order. The renewal or extension of any rule, regulation or order shall be based upon a hearing after proper notice, subject to the provisions of this Section with reference to emergency rules, regulations and orders."

"Article 6046. 'Rules for prevention of waste'

"The Commission, when necessary, shall make and enforce rules and regulations either general in their nature or applicable to particular oil fields for the prevention of actual waste of oil or operations in the field dangerous to life or property.

Article 6049c. Oil and gas conservation, powers and duties of Railroad Commission

"Section 8.

"Any interested person affected by the conservation laws of this State relating to crude petroleum oil or natural gas, and the waste thereof, including this Act, or by any rule, regulation or order made or promulgated by the Commission thereunder, and who may be dissatisfied therewith, shall have the right to file a suit in a Court of competent jurisdiction in Travis County, Texas, and not elsewhere, against the Commission, or the members thereof, as defendants, to test the validity of said laws, rules, regulations or orders. Such suit shall be advanced for trial and be determined as expeditiously as possible and no postponement thereof or continuance shall be granted except for reasons deemed imperative by the Court. In all such trials, the burden of proof shall be upon the party complaining of such laws, rule, regulation or order; and such laws, rule, regulation or order so complained of shall be deemed prima facie valid."

"Section 10.

"No injunction, whether temporary restrain-

ing order, temporary injunction, permanent injunction, or other character of injunctive relief, shall be granted against the Railroad Commission, its members, agents, and representatives, to restrain it or them from enforcing any rule, regulation, or order made and promulgated by the Railroad Commission under the conservation statutes of this State, relating to oil and gas, or any amendments thereof, or restrain the enforcement of any such statute, except after notice to the Commission and a hearing as hereinafter provided; provided that when a petition or application is filed asking for any such character of temporary injunctive relief, the clerk of the court in which such petition or application is filed shall issue notice to the Commission in writing, which notice shall contain the docket number, style, and a brief statement of the nature of such suit, and such notice shall be served on the Commission by delivering a copy of such citation to the Commission or any member thereof, or to the Secretary thereof, in Travis County, for the service of other citations, and five (5) days from and after the service of such notice a hearing may be had on such application; provided further that the rule, regulation, or order complained of shall be taken as prima facie valid and the use and introduction of the verified petition of plaintiff shall not be sufficient to overcome the prima facie validity of the rule, regulation, or order complained of, or to empower the court to grant any injunctive relief against the enforcement of said rule, regulation, or order; provided further, that before any order granting any character of injunctive relief against any such statute or against any such rule, regulation, or order of the Commission shall become effective the plaintiff shall be re-

quired by the court to execute a bond with good and sufficient sureties in an amount to be fixed by the court reasonably sufficient to indemnify all persons when the court may find from the facts proven will suffer damages by reason of the violation of the statute, rule, regulation, or order complained of, such persons to be named in the order of the judge when the amount of the bond is fixed by the court and entered of record; provided further, that the finding of the court that any party is likely to suffer damage shall not be admissible as evidence of damages in any suit on such bond. . . . "

"Section 11.

"After notice and hearing is had upon application for any such injunctive relief either party to said suit has the right of appeal from any judgment or order therein granting or refusing any injunction, whether temporary restraining order, temporary injunction, permanent injunction, or other character of injunctive relief, or from any order granting or overruling a motion to dissolve any such injunction. Said appeal shall at once be returnable to the appellate court and said action so appealed shall have precedence in said appellate court over all cases, proceedings, and causes of a different character therein pending. The provisions and requirements of Article 4662, Revised Civil Statutes of 1925, relating to temporary injunctions shall likewise apply to appeals from any order granting or refusing a temporary restraining order, or granting or overruling a motion to dissolve such temporary restraining order, under the provisions of this Act. In the Court of Civil Appeals such court shall immediately and at as

early a date as possible decide the questions involved therein; and in the event any question or questions shall be certified to the Supreme Court, or writ of error thereto be requested or granted, it is here made the duty of the Supreme Court immediately to set down said cause for hearing and decide the cause at as early a date as possible, and such cause shall have precedence over all other causes, proceedings and causes of a different character in such court. . . . "